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COMMITTEE AGAINST TORTURE

Sixteenth session

SUMMARY RECORD OF THE PUBLIC PART* OF THE 260th MEETING

Held at the Palais des Nations, Geneva,
on Thursday, 9 May 1996, at 3.40 p.m.

Chairman: Mr. DIPANDA MOUELLE

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* The summary record of the closed part of the meeting appears as document CAT/C/SR.260.

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The public part of the meeting was called to order at 3.40 p.m.

ORGANIZATIONAL AND OTHER MATTERS (agenda item 5) (continued)

1. The CHAIRMAN said he took it that the Committee agreed to appoint the following members as rapporteurs for countries whose reports were due for consideration at the forthcoming session in November 1996: for the second periodic report of Algeria, Mr. Camara and Mrs. Iliopoulos-Strangas; for the initial report of the Republic of Korea, Mr. Zupančić and Mr. Regmi; for the second periodic report of the Russian Federation, Mr. Pikis and Mr. Burns; and for the second periodic report of Uruguay, Mr. González Poblete and Mr. Sørensen. The following members would be appointed to follow up the work of other human rights treaty bodies: for the Human Rights Committee, Mr. Camara; for the Committee on Economic, Social and Cultural Rights, Mr. Burns; for the Committee on the Elimination of Racial Discrimination, Mr. Pikis; for the Committee for the Elimination of Discrimination against Women, Mrs. Iliopoulos-Strangas; and for the Committee on the Rights of the Child, Mr. Sørensen.

It was so decided.

3. Mr. SØRENSEN said that some information on the Committee on the Rights of the Child, particularly regarding its methods of work, might be of interest to the Committee.

4. The Convention on the Rights of the Child, which had entered into force in 1990, had been the greatest success in the history of the United Nations. It had now been ratified by 187 States (more than the total number of Member States of the United Nations), the only exceptions being the Cook Islands, Oman, Somalia, Switzerland, the United Arab Emirates and the United States of America. Accordingly, the Committee's workload was immense. It had only 10 members and had currently 30 reports waiting to be discussed. If all States parties fulfilled their obligations, another 80 initial reports would have been submitted before June 1996 and 57 second periodic reports were expected in 1997.

5. The Committee spent one and a half days, or three public meetings, on each report. Since the Convention on the Rights of the Child did not empower its Committee to receive individual communications, it dealt only with countries. It held three three-week sessions a year, as well as three pre-sessional meetings. When a country's report was submitted, the secretariat, assisted by the Rapporteur, made out a list of issues to be dealt with, which was sent to the country concerned one month in advance. The report, the list of issues, comments by the Government and alternative reports by non-governmental organizations (NGOs) would all be discussed at the pre-sessional meeting, at which NGOs could be invited to speak. A revised list of issues was then sent back to the country, so that when the session proper began the dialogue with the delegation could be begun immediately. Unlike most other human rights treaty bodies, the Committee had very few lawyers among its members, but included other experts, notably doctors, social workers, psychologists, journalists and politicians.

6. Despite its heavy workload, the Committee had time to analyse its recommendations country by country, to see whether patterns emerged in such areas as juvenile justice or economic exploitation of children. In carrying out that analysis, the Committee worked closely with other United Nations bodies such as the International Labour Organization (ILO), the World Health Organization (WHO) and, in particular, UNICEF. With the help of a donation from UNICEF, it had introduced a computerized system to store not only its own documentation, but also that of other human rights treaty bodies, including the Committee against Torture. It would be to the advantage of the members of the Committee on the Rights of the Child to be able to have direct access to an entire documentary service.

7. The Committee on the Rights of the Child focused on reforms of the legal systems of States parties to include adequate protection for children, who were sometimes subjected to torture, especially flogging and corporal punishment. By contrast, the Convention against Torture did not cover legally sanctioned punishments, regardless of the pain and suffering they caused. The Committee on the Rights of the Child asked States to provide education to street children, while the Committee against Torture attempted to prevent them from being tortured. In the matter of asylum-seekers, the Committee on the Rights of the Child had expressed its satisfaction concerning the existence of article 3 of the Convention against Torture and had stressed the problem of children seeking asylum, in particular unaccompanied children.

8. He suggested that, if the sessions of the two Committees happened to coincide, the Rapporteur of the Committee on the Rights of the Child might be invited to address the Committee against Torture and vice versa.

9. Commission on Human Rights resolution 1996/53 (E/CN.4/1996/L.11/Add.1) contained much of interest to the Committee. For example, the sixteenth preambular paragraph noted the existence of an international network of centres for the rehabilitation of torture victims and the collaboration of the United Nations Voluntary Fund for Victims of Torture with those centres. Operative paragraph 7 welcomed the Committee's practice of formulating concluding observations and of conducting inquiries in territories where torture was evidently practised on a systematic basis. Paragraph 8 reminded States that the Vienna Declaration and Programme of Action called on States to abrogate legislation leading to impunity for those responsible for grave violations of human rights such as torture and to prosecute such violations. It was particularly auspicious that the Commission had seen fit to take up the issue of impunity. Paragraph 9 requested the Secretary-General to provide adequate funds for staffing and technical facilities for the Committee against Torture. Paragraph 11 emphasized the obligations of State parties to provide training and education to personnel working with persons subject to detention or imprisonment and called on the High Commissioner for Human Rights to provide advisory services in that regard. The Commission on Human Rights seemed to have taken the trouble to apprise itself of the facts, rather than simply repeating the usual formulas.

10. Reminding the Committee that he had reported <u>in extenso</u> on the progress of the open-ended working group on the draft optional protocol to the Convention against Torture at the fifteenth session in November 1995, he said

that the working group had completed the first reading of the draft optional protocol and submitted its work to the Commission on Human Rights. In resolution 1996/37 (E/CN.4/1996/L.11/Add.1), the Commission had agreed that the working group should begin the second reading, on the understanding that it would invite the various concerned bodies, including the Committee against Torture, to submit their comments. He had been representing the Committee in the working group for several years and would be pleased to continue to do so. He took part in the working group's discussions and replied to questions. He also regularly reported to the Committee on the working group's progress and made the Committee's interests and concerns known to the working group.

11. Mr. BRUNI (Secretary of the Committee) said that the Committee had in fact made contributions to the work of the open-ended working group on the draft optional protocol on several occasions over the years. The drafting of the texts of international agreements was naturally the responsibility of States themselves. The working group was made up of representatives of States parties and reported to the Commission on Human Rights. The Committee was not in a position to take the initiative in that regard, but the working group had often had reason to seek its views.

12. The CHAIRMAN said he took it that the Committee would like Mr. Sørensen to continue to act as its observer on the open-ended working group on the draft optional protocol.

13. It was so decided.

14. Mrs. ILIOPOULOS-STRANGAS, introducing the draft general comment or decision on the obligation to submit reports (CAT/C/XVI/Misc.2), said that the Committee had noted with concern the significant number of States parties that had either failed to submit their reports on time or had never submitted reports, despite many reminders by the secretariat of their obligations under article 19 of the Convention. A working group, composed of herself and Mr. Slim, had been set up to draft a comment or decision (CAT/C/XVI/Misc.2) for possible inclusion in the annual report.

15. On the basis of article 26 of the Vienna Convention on the Law of Treaties, which embodied the principle of pacta sunt servanda, namely, that every treaty in force must be performed in good faith, they had stated that the Committee would be obliged to adopt measures to ensure the implementation of the Convention, including the consideration, in the absence of a report, of the situation of torture in States parties whose reports were four years overdue - four years being the established interval between the submission of periodic reports - and the inclusion in the annual report of a list of States that had failed to fulfil that obligation.

16. Although she had helped to prepare the draft decision, she was not sure whether the Committee would not be going beyond its mandate by considering the situation of torture in States parties which had not submitted reports. In her view, the Committee should simply publish a list of overdue or delinquent States in the annual report.

17. Replying to questions raised by Mr. Camara, she said that her doubts were based on the wording of article 19, which provided that States parties should submit reports to the Committee on the measures they had taken to give effect to their undertakings under the Convention and that the Committee would consider those reports. In basing many of the questions it asked States parties on other sources and, in particular, on the reports of NGOs, the Committee was already at the outside limit of its mandate. Need it add that the Convention empowered the Committee only to consider the "measures taken" by States parties, while the reports of NGOs generally described subjective and particular cases. The confidential inquiry was quite another matter since it was clearly provided for by article 20 of the Convention.

18. Although article 26 of the Vienna Convention on the Law of Treaties did indeed call on States to fulfil their treaty obligations in good faith, it did not provide for penalties.

19. Mr. CAMARA said that it would be useful to compare the relevant provisions of other human rights treaties so as to understand on what basis the other treaty bodies had decided to consider the situation of States parties which had not submitted reports. If treaty bodies considered the situation of States parties without reports, they could alienate States and ultimately put themselves out of work. In his view, however, a period of four years was too long; one year should be enough.

20. Mr. BURNS said that chapter III of the draft annual report (CAT/C/XVI/CRP.1/Add.3) was referred to the reporting status of States parties and contained a list of States parties whose reports were overdue. That part of the draft comment or decision had therefore already been taken care of. He fully agreed with Mrs. Iliopoulos-Strangas' analysis. The Convention provided the Committee with a particular set of functions and chasing after laggard States parties was not one of them. Since each year the annual report drew attention to a particular problem, the Committee might use that opportunity to arouse interest in pressuring States parties to fulfil their obligations. It was foolish to suppose that the Committee could assess the compliance of States parties with the terms of the Convention on the basis solely of reports from NGOs. Although other treaty bodies had been expanded their jurisdiction, the Committee against Torture, composed as it was almost entirely of lawyers, knew better.

21. Mr. SØRENSEN said that the wording of the draft general comment was very mild. As it merely stated that the Committee was "considering the possibility" of examining the situation in States parties that had not submitted reports, it could serve as a warning to the States concerned, which were probably unaware of the Committee's limited jurisdiction.

22. He was in favour of maintaining the four-year delay or the fifteenth reminder as the cut-off point for giving notice to a State party that its compliance with the Convention would be discussed on a particular date, with or without its participation.

23. The CHAIRMAN asked how the Committee would proceed if the State party concerned failed to send a delegation.

24. Mr. SØRENSEN said that, if the mild wording of the draft general comment failed to produce the desired effect, the Committee could discuss further strategy at a later session.

25. Mr. PIKIS said that the Committee could not assume jurisdiction to monitor a State party's compliance with the Convention outside the context of its reports. NGO or other material could not be used for the purpose and the Committee's authority would be undermined if it issued threats that could not be carried into effect. All it could do was to publish a list of defaulting States in its annual report, pointing out that such laxity cast doubt on their commitment to the implementation of the Convention and adding that, under such circumstances, the Committee's ability to fulfil its monitoring obligations was severely hampered.

26. Mr. YAKOVLEV said he agreed that the Committee could not initiate inquiries outside the context of State party reports. However, the reminders could perhaps be expanded to include a simple reference to NGO submissions, pointing out that the State party would do well to rebut their charges by submitting a report.

27. The Committee against Torture differed from some of the other human rights treaty bodies in that it was dealing with criminal behaviour.

28. He viewed the problem of the non-submission of reports as a challenge to the entire United Nations treaty system. A radical response was needed and such a response could come only from a higher body such as the General Assembly, for example, through the formulation of a general policy and the preparation of guidelines for the human rights treaty bodies. He proposed that the matter should be raised with the Secretary-General for possible inclusion in the agenda of the next session of the General Assembly.

29. Mrs. KLEOPOULOS-STRANGAS said that the original version of the last sentence of the draft general comment had stated that the list of defaulting States would be published "with specific observations". In addition to indicating the number of reminders sent, those observations might include a reference to NGO submissions.

30. With regard to possible action by the General Assembly, the trouble with public international law was that obligations were not enforceable, but depended on the "good faith" of the State party concerned. Although indirect pressure could be applied through, for example, article 21 of the Convention, no State party had taken such action to date.

31. Mr. CAMARA suggested that the Committee should prepare a press release at the end of each session, listing States that had failed to meet their obligations. The annual report was not widely read, but a press release would alert public opinion, which had a far greater impact on the behaviour of Governments. Senegal's failure, for purely bureaucratic reasons, to send a delegation to the Committee's last session had been treated by the local media as a sign that the authorities had something to hide. Perhaps the size of the Senegalese delegation to the current session had been a reaction to those insinuations.

32. Mr. SØRENSEN said that the current debate bore out the statement in the penultimate paragraph of the draft general comment that the Committee was "considering the possibility" of examining the situation in States parties that had not submitted reports. He urged that the comment should be included in the annual report.

33. Mr. BURNS said that the Committee's moral status would be undermined if it threatened to exceed its jurisdiction.

34. He supported Mr. Camara's suggestion about publicity in the media.

35. Mr. GONZÁLEZ POBLETE said he agreed that the Committee's only potentially effective option was to appeal to international public opinion in the hope that States parties would be shamed into compliance with their obligations. He supported the idea of compiling a list of offenders for publication in a press release.

36. Mr. SØRENSEN said that he deferred to the majority view and withdrew his proposal for publication of the draft general comment.

37. Mrs. ILIOPOULOS-STRANGAS suggested that an observation along the following lines should be inserted in the annual report to incite dutiful States parties to exert pressure on offenders:

> "As no State party has exercised its right under article 21 to enter a complaint against States parties that have not fulfilled their obligation to submit reports, the Committee has been unable to address the issue."

38. Mr. BRUNI (Secretary of the Committee) said that although every conceivable angle of the problem of the non-submission of reports had been discussed in the other treaty bodies and at the Meetings of Chairpersons of Human Rights Treaty Bodies, little progress had been made in practical terms.

39. The Committee on the Elimination of Racial Discrimination had decided that, where a State party had submitted an initial report and other sources of information were available, some reaction was called for if no follow-up report was submitted within a reasonable period of time. It did not review developments in the absence of a report, but inserted a paragraph in its annual report to the effect that the Committee had regrettably been unable to verify information from certain sources or to form a definite opinion of the State party's compliance with the Convention.

40. The status of the Committee on Economic, Social and Cultural Rights was somewhat different inasmuch as it was affiliated to the Economic and Social Council and hence composed of government representatives. Most NGOs also had some formal status with the Committee so that their submissions could be published as official documents. Where reports were overdue by as much as 10 years, a final reminder was sent to the States parties concerned, warning them that their compliance with the International Covenant on Economic, Social and Cultural Rights would be monitored on a particular date even in

the absence of an initial report. That was not a vain threat because the Committee had in fact considered the cases of Gambia, Guinea and Mali in the absence of a report.

41. The Human Rights Committee had recognized that it had no jurisdiction to monitor compliance with the International Covenant on Civil and Political Rights in the absence of a report. Moreover, it feared that such action might prove counterproductive, giving the State party concerned an excuse to challenge the Committee's objectivity and to ignore its obligations for a further indeterminate period.

42. He noted that chapter III of the draft annual report (CAT/C/XVI/CRP.1/Add.1) listed the number of reminders issued to defaulting States parties and that annex III (CAT/C/XVI/CRP.1/Add.10) provided a complete picture of the compliance or non-compliance of all States parties with their obligations.

43. Mrs. ILIOPOULOS-STRANGAS requested the members of the Committee to decide whether the draft general comment should form an introduction to the list of States parties and whether the list should be annexed to the draft report. She also asked whether they accepted her proposal concerning communications under article 21, which might be drafted in more diplomatic language.

44. Mr. BURNS proposed that the Committee should adopt Mr. Camara's suggestion that a press release should be prepared at the end of each session with as much information as the Committee deemed appropriate and that the same information should be included in the annual report.

45. Mrs. ILIOPOULOS-STRANGAS asked Mr. Burns whether he could agree to a general comment drawing attention to obligations under the Vienna Convention.

46. Mr. BURNS said that he was opposed to any such action, as all States knew that they were supposed to comply with treaties.

47. Mr. PIKIS said that the press release should emphasize that the submission of reports was compulsory and that, without a report, it was impossible for the Committee to monitor the application of the Convention in the country in question. That was a way of indicating that a failure to submit a report might be based on ulterior motives.

48. Mr. SØRENSEN suggested that chapter III of the draft report should be adopted as it stood, except for paragraph 6.

49. Mr. PIKIS urged that it should be made absolutely clear that States which failed to submit a report made the monitoring of obligations impossible in that country.

50. Mr. BRUNI (Secretary of the Committee) said he had forgotten to mention that the list of States whose reports were overdue was also contained in the annotations to the Committee's provisional agenda, which was received by non-governmental organizations. At its press conference, the Committee could refer to such tardiness and produce a list similar to that contained in the draft report.

51. Mrs. ILIOPOULOS-STRANGAS said that Mr. Pikis' suggestion would be just as effective as a press conference, since press conferences were sometimes poorly attended. On the other hand, as the report could be read by anyone who was interested, she suggested that it might briefly refer to the Committee's discussion and its decision to issue a press release.

52. Mr. GONZÁLEZ POBLETE said that some reports were so late that, by the time they were considered, the next report was already due.

The public part of the meeting rose at 5.45 p.m.